

## § 1215.5

who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

(b) A State that enacts the law specified in paragraph (a) of this section will be determined to comply with 23 U.S.C. 153, provided that any exemptions are consistent with § 1215.5.

(c) If New Hampshire or Maine enacts a law described in paragraph (a) of this section by January 27, 1996, the State shall be deemed as having that law in effect on September 30, 1995.

(d)(1) If the Secretary certifies in a fiscal year that New Hampshire or Maine has achieved the safety belt use rate specified in paragraph (d)(2) of this section, the State shall be considered as complying with the provisions of paragraph (a) of this section.

(2) The safety belt use rate must be not less than 50 percent in each of fiscal years 1995 and 1996, and not less than the national average as determined by the Secretary in each fiscal year thereafter.

[61 FR 28749, June 6, 1996]

## § 1215.5 Exemptions.

(a) Safety belt use laws exempting persons with medical excuses, persons in emergency vehicles, persons in the custody of police, persons in public and livery conveyances, persons in parade vehicles, persons in positions not equipped with safety belts, and postal, utility and other commercial drivers who make frequent stops in the course of their business shall be deemed to comply with 23 U.S.C. 153.

(b) Safety belt use laws exempting vehicles equipped with air bags shall be deemed not to comply with 23 U.S.C. 153.

(c) An exemption not identified in paragraph (a) of this section shall be deemed to comply with 23 U.S.C. 153 only if NHTSA and FHWA determine that it is consistent with the intent of § 1215.4(a), and applies to situations in which the risk to occupants is very low or in which there are exigent justifications.

[61 FR 28749, June 6, 1996]

## 23 CFR Ch. II (4–1–07 Edition)

## § 1215.6 Review and notification of compliance status.

Review of each State's laws and notification of compliance status shall occur each fiscal year, in accordance with the following procedures:

(a) NHTSA and FHWA will review appropriate State laws for compliance with 23 U.S.C. 153. States initially found to be in non-compliance will be notified of such finding and of funds expected to be transferred or reserved (as applicable) under § 1215.7, through the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) A State notified of non-compliance under paragraph (a) of this section may, within 30 days after its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance to the Associate Administrator for State and Community Services, NHTSA, 400 Seventh Street, SW, Washington, D.C., 20950.

(c) Each fiscal year, States determined to be in non-compliance with 23 U.S.C. 153 will receive notice of the funds being transferred or reserved (as applicable) under § 1215.7, through the certification of apportionments required under 23 U.S.C. 104(e), normally on October 1.

[61 FR 28749, June 6, 1996]

## § 1215.7 Transfer of funds.

(a) Except as provided in paragraph (b) of this section, if at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect a law described in § 1215.4(a), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) to the apportionment of the State under 23 U.S.C. 402.

(b) For New Hampshire or Maine, except as provided in § 1215.4(c), if at any time in a fiscal year beginning after September 30, 1994, the State does not have in effect a law described in § 1215.4(a), the Secretary shall reserve 3 percent of the funds to be apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2)

## NHTSA and FHWA, DOT

## § 1225.3

and (b)(3) if the Secretary has not certified, in accordance with §1215.4(d), that the State has achieved the applicable safety belt use rate.

(c) If, at the end of a fiscal year in which the funds are reserved for New Hampshire or Maine under paragraph (b) of this section, the Secretary has not certified that the State achieved the applicable safety belt use rate, the Secretary shall transfer the funds reserved from the State to the apportionment of the State under 23 U.S.C. 402.

(d) Any obligation limitation existing on transferred funds prior to the transfer will apply, proportionately, to those funds after transfer.

[61 FR 28749, June 6, 1996]

### § 1215.8 Use of transferred funds.

(a) Any funds transferred under §1215.7 may be used for approved projects in any section 402 program area.

(b) Any funds transferred under §1215.7 shall not be subject to Federal earmarking of any amounts or percentages for specific program activities.

(c) The Federal share of the cost of any project carried out under section 402 with the transferred funds shall be 100 percent.

(d) In the event of a transfer of funds under §1215.7, the 40 percent political subdivision participation in State highway safety programs and the 10 percent limitation on the Federal contribution for Planning and Administration activities carried out under section 402 shall be based upon the sum of the funds transferred and amounts otherwise available for expenditure under section 402.

## PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Sec.

1225.1 Scope.

1225.2 Purpose.

1225.3 Definitions.

1225.4 Adoption of 0.08 BAC *per se* law.

1225.5 General requirements for incentive grant program.

1225.6 Award procedures for incentive grant program.

1225.7 Certification requirements for sanction program.

1225.8 Funds withheld from apportionment.

1225.9 Period of availability of withheld funds.

1225.10 Apportionment of withheld funds after compliance.

1225.11 Notification of compliance.

1225.12 Procedures affecting States in non-compliance.

APPENDIX A TO PART 1225—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

AUTHORITY: 23 U.S.C. 163; sec. 351, Pub. L. 106-346—Appendix, 114 Stat. 1356A-34, 35; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 68 FR 50708, Aug. 22, 2003, unless otherwise noted.

### § 1225.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 163, which encourages States to enact and enforce 0.08 BAC *per se* laws through the use of incentive grants and Section 351 of Public Law 106-346—Appendix, which requires the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC *per se* law as described in 23 U.S.C. 163.

### § 1225.2 Purpose.

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163; and the steps that States must take to avoid the withholding of funds as required by Section 351 of Public Law 106-346—Appendix.

### § 1225.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *ALR* means either administrative license revocation or administrative license suspension.

(c) *BAC* means either blood or breath alcohol concentration.

(d) *BAC per se law* means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.

(e) *Citations to State law* means citations to all sections of the State's law relied on to demonstrate compliance with 23 U.S.C. 163, including all applicable definitions and provisions of the